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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.6.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) Nos.72 and 73 of 2003

Commissioner of Income Tax
Madurai. .. Appellant

Vs.

M/s.Taj Fire Works Industries,
Sivakasi. .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench Chennai dated 15.11.2002 in ITA Nos.1365 and 1366/Mds/1993, for the assessment years 1988-89 and 1989-90 against the order of the commissioner of Income Tax (Appeals I),Madurai dated 2.2.1993 and made in ITA.No.141/91-92 and 11/92-93 for the Assessment Year 1988-89 and 1989-90 against the order of the Deputy Commissioner of Income Tax, Special Range I, Madurai dated 20.3.1991 and made in PAN.No.49-007-FQ-4283/1988-89 and against the order of the Assistant Commissioner of Income Tax Circle I, Virudhunagar dated 10.2.1992 and made in PAN/GIR.No.FQ - 4282/AC-1/VNR for the Assessment Year 1989-90 respectively.

For Appellant : Mr.J.Narayanasamy

For Respondent : Mr.T.N.Seetharaman

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The question of law, of course, very interesting to hear and decide, raised in these appeals is,

> "Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is an industrial undertaking eligible for the benefit of Sec.80HH and Sec.80I of the Income Tax Act ?"

The above two appeals, both preferred by the Revenue, are relating to the Assessment Years 1988-89 and 1989-90.

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2. The assessee is engaged in the business of fire works on job work basis for labour charges out of the raw materials supplied by its customer, viz., Sri Kaleeswari Fire Works. In the assessment for the assessment years 1988-89 and 1989-90, the assessing officer, inter alia, disallowed the claim made by the assessee for deduction u/s 80 HH and 80 I on the ground that the assessee is only a labour contractor and not an industrial undertaking eligible for the benefit of Section 80 HH and 80 I of the Act.

3. Aggrieved by the assessment order, the assessee filed appeals before the Commissioner of Income-tax (Appeals), who held that there is no need for the assessee to be a manufacturer in his own right and even a job worker, or a person who uses the customer's raw material would qualify for being termed as an industrial undertaking, supported by the decision of this Court in C.KADARKARAI vs. CWT (176 ITR 121). The Commissioner of Income-tax (Appeals), by order dated 2.2.93, regarding the assessing officer's view that the assessee was a unit created by the splitting up of the business of Sri Kaleeswari Fire Works, held that there is nothing on record to indicate such a presumption.

4. Aggrieved by the order dated 2.2.93 of the Commissioner of Income-tax (Appeals), the Revenue took out further appeals before the appellate Tribunal, which by order dated 15.11.2002, dismissed the same agreeing with the decision of the Commissioner of Income-tax (Appeals). Hence, these appeals.

5.1. Mr.J.Narayanasamy, learned standing counsel appearing for the Revenue, precisely contends that the Commissioner of Income-tax (Appeals) as well as the appellate Tribunal erred in holding that the assessee is an 'eligible industrial undertaking' to avail the benefit of Sections 80 HH and 80 I of the Income-tax Act.

5.2. It is further contended that the assessee, being a job worker, is not entitled to the benefit, because the assessee, being a job worker, is receiving only labour charges and thereby, loses the character of a manufacturer, much less, a real manufacturer, who, according to the Revenue, is only Sri Kaleeswari Fire Works under the facts and circumstances of the case, since it pays the duty, which would go to show that the assessee would not be treated as an industrial undertaking.

6.1. On the other hand, Mr.Seetharaman, learned counsel appearing for the respondent/assessee, inviting our attention to the decision rendered by this Court in C.KADARKARAI v. C.W.T. [(1989) 176 ITR 121] and the decision rendered by the Gujarat High Court in CIT v. PRABHUDAS KISHORDAS TOBACCO PRODUCTS [(2006) 282 ITR 568], submits that the assessee does not lose the character of the manufacturer merely because he is engaging labourers for labour contract, as he is producing the end product, viz., crackers, by using the raw materials furnished by Sri Kaleeswari Fire Works. In other words, it is contended that merely because the raw materials are obtained from outsider, the assessee, who produces the new product, viz., crackers, by engaging labourers as labour contract, it cannot be said that he is not manufacturing a new product.

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6.2. The further contention of Mr.Seetharaman, learned counsel, is that merely because Sri Kaleeswari Fire Works pays the duty, it would not disentitle the assessee to claim the benefit of Section 80 HH and 80 I, as the asseesee by itself has produced the new product, viz., crackers, out of the raw materials furnished by Sri Kaleeswari Fire Works and thus, satisfies the ingredients of the terms 'manufacture' and 'industrial undertaking', for having engaged 200 labourers.

7. In the light of the above rival contentions and in order to decide the questions raised, we are obliged to render a finding on the following points:-

i) Whether the assessee is a manufacturer;

ii) Whether the assessee satisfies the ingredients of an industrial undertaking to claim the benefit of Sections 80 HH and 80 I;

iii) Whether the assessee loses the character of manufacturer merely because it has engaged coolies under a labour contract to produce the end product, viz., crackers and for having obtained raw materials from Sri Kaleeswari Fire Works, who pays the duty; and finally

iv) Whether the payment of duty by Sri Kaleeswari Fire Works will disentitle the assessee to claim the benefit of Sections 80 HH and 80 I of the Act.

8. Before proceeding further, it is apt to refer the relevant portions of Sections 80 HH and 80 I of the Income-tax Act, as prevailed during the assessment years 1988-89 and 1989-90, which read as follows:

" 80HH. Definitions in respect of profits and gains from newly established industrial undertaking or hotel business in backward areas. -

(1) ....

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

(i) it has begun or beings to manufacture or produce articles after the 31st day of December, 1970, in any backward area;

(ii) it is not formed by the splitting up, or the reconstruction, of a business already in existence in any backward area;

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Provided that this condition shall not apply in respect of any industrial undertaking which is formed as a

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result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;

(iii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose in any backward area;

(iv) it employees ten or more workers in a manufacturing process carried on with the aid of power, or employs twenty or more workers in a manufacturing process carried on without the aid of power.

.....

80-I. Deduction in respect of profits and gains from industrial undertaking after a certain date, etc. - (1) ....

(2) This section applies to any industrial undertaking which fulfils all the following conditions, namely:-

(i) it is nor formed by the splitting up, or the reconstruction, of a business already in existence;

(ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose;

(iii) it manufactures or produces any article or thing, not being any article or thing specified in the list in the Eleventh Schedule, or operates one or more cold storage plant or plants, in any part of India, and begins to manufacture or produce articles or things or to operate such plant or plants, at any time within the period of nine years next following the 31st day of March, 1981, or such further period as the Central Government may, by notification in the Official Gazette, specify with reference to any particular industrial undertaking;

(iv) in a case where the industrial undertaking manufactures or produces articles or things, the undertaking employes ten or more workers in a manufacturing process carried on with the aid of power, or employes twenty or more workers in the manufacturing process carried on without the aid of power:

Provided that the condition in clause (i) shall not apply in respect of any industrial undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section:

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Provided further that the condition in clause (iii) shall, in relation to a small-scale industrial undertaking, apply as if the words "not being any article or thing specified in the list in the Eleventh Schedule" had been omitted."

9.1. In the context of Sections 80 HH and 80 I of the Act, the Gujarat High Court, in CIT v. PRABHUDAS KISHORDAS TOBACCO PRODUCTS [(2006) 282 ITR 568], whereunder the assessee purchased tendu leaves and got them rolled into bidis by contract workers, the bidis being a distinct product different from tendu leaves, after referring to the following decisions of the Apex Court as well as its own decisions, namely,

i) ANWARKHAN MEHBOOB CO. V. STATE OF BOMBAY [(1961) 11 STC 698]

ii) BANGALORE WATER SUPPLY AND SEWERAGE BOARD v. RAJAPPA (A.) [AIR 1978 SC 548];

iii) CIT v. J.B.KHARWAR AND SONS [(1987) 163 ITR 394;

iv) CIT v. SIRDAL FOOD P.LTD. [(2006) 282 ITR 563];

v) CIT v. V.B.NARANIA AND CO. [(2001) 252 ITR 884];

vi) CWT v. MOHINIBAI KANAIYALAL [(1999) 240 ITR 636]; and

vii) CWT v. MUBARAKALI KHAN [(1980) 123 ITR 101].

held as follows:-

> " The test is whether the outside agency works directly under the supervision and control of the assessee, it being immaterial whether the processing is done by the workers employed by the assessee at a place outside the premises of the assessee. In relation to the additional reason given by the Assessing Officer for denying relief under section 80-I of the Act, both the Commissioner (Appeals) and the Tribunal had found that, for thepurposes of determining whether a unit is a small scale industrial undertaking or not, while ascertaining the monetary limit laid down in the provision, all assets of the business were not to be taken into consideration. The Tribunal was justified in treating the activities carried on by the assessee as amounting to manufacture of bidies, entitling the assessee of relief under sections 80HH and 80-I."

In the said decision, it was further held as follows:-

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> " The tests to ascertain whether an activity amounts to manufacture or production of an article or thing have been laid down and reiterated by various

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decisions of the apex court and this High Court. Broadly, the requirement is that the raw material must be, in the first instance, subjected to a process of such a nature that it cannot be termed to be the same as the end-product after the raw material undergoes the process of manufacture. In other words, the goods purchased as raw material should go in as inputs in the process of manufacture and the result must be manufacture of other goods. The article produced must be regarded by the trade as a new and distinct article having an identity of it sown, an independent market after the commodity is subjected to the process of manufacture. The nature and extent of the process would vary from case to case, and in a given case, there may be only one stage of processing, while in another case, there may be several stages of processing, and perhaps, a different kind of process at every stage. That with every process, the commodity would experience a change, but ultimately, it is only when the change, or a series of changes, bring about a result so as to produce a new and distinct article, that it can be said that the commodity used as raw material has been consumed in the manufacture of the end-product. To put it differently, the final product does not retain the identity of the raw material after it has undergone the process or processes of manufacture."

(emphasis supplied)

9.2. That apart, it is also relevant to rely on the decision of the Apex Court in HINDUSTAN POLES CORPORATION v. COMMISSIONER OF CENTRAL EXCISE, CALCUTTA (2006 AIR SCW 1685), wherein it is held as follows:-

" 27. A Constitution Bench of this Court in Union of India v. Delhi Cloth and General Mill Co.Ltd. - AIR 1963 SC 791, had attempted to decide the meaning of expression 'manufacture'. The Court held that 'manufacture' which is liable to excise duty under the Central Excise and Salt Act, 1944, must therefore be the "bringing into existence of a new substance known to the market."

28. In another Constitution Bench of this Court in Dvei Dass Gopal Krishnan and others v. The State of Punjab and others, reported in Sales Tax Cases XX (1967) page 430, [AIR 1967 SC 1895], the Court relied on the dictionary meaning of 'manufacture' and according to Court 'manufacture' means 'transform or fashion raw materials into a changed form for use'. The Court observed that if by a process a different identity comes into existence then it can be said to be 'manufacture'.

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> 29. In Empire Industries Ltd. v. Union of India - AIR 1986 SC 662, it was observed that manufacture is complete as soon as by the application of one or more processes, the raw material undergoes some change. If a new substance is brought into existence or if a new or different article having a distinct name, character or use result from particular process, such process or processes would amount to manufacture. Whether in a particular case manufacture has resulted by process or not would depend on the facts and circumstances of the particular case.
>
> 30. A Constitution Bench of this Court in M/s.Ujagar Prints and Anr. v. Union of India and others, AIR 1989 SC 516 - followed the earlier decision in Empire Industries ltd. v. Union of India (supra). While following the earlier judgment it was held that if there should come into existence a new article with distinct character and use as a result of the process, the essential condition justifying manufacture of good is satisfied.
>
> 31. This Court in Commissioner of Sales Tax, Orissa and Anr. v. Jagannath Cotton Company and Anr. (1995) 5 SCC 527 - mentioned that manufacture in its ordinary connotation, signifies emergence of new and different goods as understood in relevant commercial circles."
>
> (emphasis supplied)

9.3. Applying the above ratio, we do not have any hesitation to hold that the assessee is a manufacturer eligible to claim the benefit of Sections 80 HH and 80 I. However, the issue does not come to an end, as the assessee must also be an industrial undertaking to claim deduction under Section 80 HH and 80 I, even though he is a manufacturer, as held above.

10.1. Mr.J.Narayanasamy, learned standing counsel, contended that the assessee is not an industrial undertaking because he is only a labour contractor engaging coolies for converting the raw materials supplied by Sri Kaleeswari Fire Works into crackers by paying labour charges to the coolies and therefore, the assessee cannot be construed as an industrial undertaking.

10.2. This identical question came up for consideration before this Court in Kadarkarai's case, reported in (1989) 176 ITR 121 (supra), whereunder the assessee was carrying on a business in printing and he undertook the job work such as printing of inland letters, labels, note books, fancy wrappers, wedding cards, etc. with his offset printing machine. In addition to that, he also purchased raw materials like paper and card-board and converted them into inland letters, note books, labels, etc. and sells the same. But, the exemption claimed by the assessee under Section 5(1)(xxxi)

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of the Wealth Tax Act, was denied by the respondent therein on the ground that the assessee was doing only cooly printing and therefore, the business which he was carrying on was not an industrial undertaking entitled to exemption and this Court, after analysing the ratios laid down in CIT v. AJAY PRINTERY PRIVATE LIMITED [(1965) 58 ITR 811], CIT v. COMMERCIAL LAWS OF INDIA (P.) LTD. [(1977), 107 ITR 822], CWT v. K.LAKSHMI [(1983) 142 ITR 656] AND CIT v. J.B.KHARWAR AND SONS [(1987) 163 ITR 394], held that the assessee manufactures the end-product by himself or by engaging labourers under labour contract by purchasing raw materials or the customers supplying the raw materials and therefore, the words 'manufacture' and 'process', to confer the benefit of Sections 5(1)(xxxi), should be given liberal interpretation. In CIT v. N.C.BUDHARAJA AND CO. [(1993)204 ITR 413], the Apex Court has held that while deciding on the entitlement of the benefit under Section 80 HH and 80 I, which being a beneficient object, a liberal interpretation, of course without doing any violation to the plain language, is to be given and thus, held that the assessee was an industrial undertaking eligible to claim the benefit of Sections 80 HH and 80 I of the Act.

10.3. In the instant case, it is not in dispute that the assessee has only been supplied with the raw materials from Sri Kaleeswari Fire Works and of course, he has engaged coolies, viz., 200 labourers to produce the end product of crackers, thus satisfies the test of manufacurer by producing the new material, namely, crackers and also satisfies the test of industrial undertaking, as the assessee has involved in systematic activity, organised by co-operation between employer and employee, viz., 200 labourers, and for the production and distribution of goods, viz., new product, crackers. If that be so, the contentions advanced by Mr.J.Narayanasamy, learned standing counsel, that the assessee is not entitled for the benefit of Sections 80 HH and 80 I, as he has not possessed plant and machinery and that the payment of duty by Sri Kaleeswari Fire Works would also disentitle the assessee to claim the benefit of Sections 80 HH and 80 I, are alien to the interpretation contemplated for the purpose of conferring the benefit of Section 80 HH and 80 I of the Act.

11. In view of the above, we are satisfied that the Commissioner of Income-tax (Appeals) and the Tribunal having fully satisfied that the assessee is entitled for the benefit of Sections 80 HH and 80 I, being a manufacturer and an industrial undertaking, have conferred the benefit. In that view of the matter, we answer the question of law raised in these appeals in the affirmative, against the Revenue. The Tax Case Appeals are, accordingly, dismissed.

sra

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Assistant Registrar
Income Tax Appellate Tribunal
Madras Bench A, Chennai-90.

2.The Secretary
Central Board of Direct Taxes
New Delhi.

3.The Commissioner of Income Tax (Appeals)
Madurai.

4.The Assistant Commissioner
of Income Tax, Company Circle I
Virudhunagar.

5.The Deputy Commissioner of Income Tax
Special Range I, Madurai.

+ one cc to Mr.T.N.Sethuraman, Advocate Sr.No.24222
+ one cc to M/S.Pushya Sitaraman, Advocate Sr.No.24420.

VC (CO)
RSM/26.6.2006

TC (A).nO.72 and 73 of 2003

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